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Current Topics.

The War and the U.S.A. Federal Courts.

IN a memorandum published on 18th March by the United States Office of War Information it is reported that Mr. HENRY P. CHANDLER, Director of the Administrative Office of the United States Courts, has told the Appropriation Committee of the House of Representatives that the war has placed an unusual strain upon American courts, but that "the U.S. courts recognise that we are in a war." The Administrative Office of the U.S. Courts works closely with the Judicial Conference, a body composed of the Senior Circuit Judges and the Chief Justice of the U.S. Supreme Court. Mr. CHANDLER said that strains on the courts had resulted from the war. One, he pointed out, was owing to the fact that naturalisation cases had increased 17·4 per cent., as more and more alien residents appreciated the value of U.S. citizenship. On the other hand, bankruptcy proceedings had decreased in number about one-third. Mr. CHANDLER continued: "prosecutions for violations of the liquor laws were going down 57 per cent. Such cases were only 15 per cent. of the total number of criminal cases as compared with 33 per cent. the year before—1942." To explain the falling off in liquor and narcotic cases, Mr. CHANDLER, said, "we like to think one important factor . . . is the opportunity for legitimate employment. Prosecutions for the violation of the Selective Service Act went up from 3,384 in 1942 to 7,934 in 1943, an increase of pretty close to two and a half times . . . Prosecutions for espionage, sabotage, sedition and treason went up about 11 per cent.; prosecutions for the illegal use of the military uniform about 183 per cent.—those nearly trebled. In 1943 prosecutions for violations of the price control and rationing regulations, 2,311 in number, constituted 6 per cent. of the total number of criminal cases." Mr. CHANDLER said that in 1943, 16,393 persons on probation from the Federal Courts earned more than 22,000,000 dollars. He added: "that is an illustration of the economic value of probation, aside from the social value of it. Up to 31st December, 1943, 5,452 probationers had been called into military service . . . of that number only thirty-eight, as far as we know, or about 9·7 of 1 per cent., have been dishonourably discharged; five of the 5,452 had been decorated for bravery." Making allowances for the many differences, territorial, constitutional and racial, between the United Kingdom and the U.S.A. it is surprising how much can be recognised as common to both countries in respect of the effects of war in the work of the courts.

Planning: Land Acquisition.

COMPLAINTS of delay in the statement of policy by the Government on the findings of the Uthwatt and Barlow reports were made in the course of a two-days' debate in the House of Lords on 22nd and 23rd March, and were answered by Government spokesmen. LORD LATHAM opened the debate and pointed out that the Uthwatt Committee had been appointed as a matter of urgency. He referred to repeated promises on behalf of the Government to give powers to local authorities to purchase land compulsorily for reconstruction, and criticised the statement by the Minister of Health on 15th March that the utmost that could be looked for in any reasonably short time was legislation dealing with reconstruction areas and the 1939 ceiling, and that comprehensive legislation for planning and development purposes must await further consideration. Housing, he said, could not be considered separately from planning. If we failed now to introduce comprehensive legislation, we should have lost all opportunity for a generation. VISCOUNT SAMUEL asked whether it was conceivable that the National Federation of Property Owners and others holding similar views could have brought any influence to bear upon any section of the Government. He said that this procrastination exasperated the people, and if it was stubbornly continued the gravest political consequences must ensue. LORD WOOLTON, intervening in the debate on behalf of the Government, said that an immense amount of time was needed to work out legislative details and he retained the view that the problem of making land available for housing and industry was a matter of primary importance. His lordship knew of no opposition by vested interests or political parties and he was authorised by the Government to say that they would make proposals to Parliament as soon as possible after Easter. Questions of land reform must go to the War Cabinet, which had to determine the issues that had to have priority on the calls made upon their time. THE ARCHBISHOP OF YORK said that he was still puzzled by the delay of the Government in taking a decision on the recommendations of the Uthwatt and Barlow reports. The obstacles could not be political, and His Grace referred with approval to the Conservative subcommittee's recent report as showing that a very large number of Conservatives wished to see the reports fulfilled. VISCOUNT ASTOR said that we wanted someone to cut red tape in Whitehall. LORD MESTON referred to the uncertainty of large numbers of people as to what was to be done with bombed areas. LORD CHESHAM said that as President of the National Federation of Property Owners he wished that body had more influence with the Government. What worried his lordship and the Federation, and perhaps the Government, was not the aim of providing houses, but that of the acquisition of development rights.

Further Discussion.

ON the second day VISCOUNT MAUGHAM reopened the debate by saying that the sites for 200,000 to 300,000 houses, stated by the Minister to have been now provided, were little more than a drop in the ocean. The immediate need was for 1,000,000 houses, and in the next ten or twelve years the country would need 3,000,000 to 4,000,000 houses. It was not the question whether the Government accepted lock, stock and barrel the suggestions in the Uthwatt, Scott and Barlow reports that stopped building, but the fact that there were no workmen to build them. His lordship suggested that sound temporary buildings must be provided pending the carrying out of the building programme. His lordship said that some of the proposals in the Uthwatt report were of a highly controversial character. EARL DE LA WARR said that the needed houses could not be built until the local authorities had before them the proposals that had been promised at some date unspecified after Easter. LORD REITH supported LORD WOOLTON and LORD JESSEL did not think that a good case had been made against the Government. He referred with satisfaction to the money that had been spent in repairing "blitzed houses." LORD BALFOUR OF BURLEIGH thought that the fault for the delay partly lay with the Ministry of Agriculture, the Board of Trade and the Ministry of Health, who did not realise that a positive policy of planning from a national point of view involved subordination of departmental interests. LORD SOULBURY protested against regimentation, regulating, and Government restrictions. LORD ROCHE expressed confidence in LORD WOOLTON'S ability to carry through his programme. The EARL OF WARWICK supported this view. The debate was closed after LORD BEAVERBROOK had referred to the Government's recent achievements, and LORD LATHAM had asked for and obtained leave to withdraw his motion, promising at the same time to reopen the matter if "as soon as possible" proved not to be as soon as possible. The best possible reply to the criticisms in the Lords was given by Mr. CHURCHILL in one of the best debating speeches of his career, broadcast on 26th March. He repeated the declaration of 1941, that all land needed for public purposes shall be taken at prices based on the standards of values of 31st March, 1939. This formidable decision of State policy selected property in land for a special restrictive imposition. Legislation to enable local authorities to secure any land required for the reconstruction of our towns had been promised, the Prime

Minister said, and would be presented to Parliament this session. The value of the land involved was between one-twentieth and one-thirtieth of the cost of the houses to be built upon it. The Prime Minister has thus further defined the phrases "proposals to Parliament" and "as soon as possible after Easter" in terms which should leave no further ground for dissatisfaction.

Company Law Reform.

THE Committee of London Clearing Bankers gave their views to the Company Law Amendment Committee on 21st January, 1944, through their representatives, Sir CHARLES LEDBURY and Mr. HENRY BRAILSFORD LAWSON. Their general opinion is one of satisfaction with the way in which the Companies Act, 1929, meets the needs of trade and industry, and at the same time, with the aid of the Prevention of Fraud (Investments) Act, 1939, protects the community at large and the inexperienced investor. While dissenting from the recommendation of the Greene Report that "no company should, without the consent of the Board of Trade, be registered with a name including the words 'Bank' or 'Banking,'" they, nevertheless, suggest that the use of the word should be confined to those businesses, the main purpose of which is banking. The Clearing Bankers state that it might be desirable to print on all prospectuses a notice to the effect that the use of the bank's name must not be taken as giving any direct or implied recommendation to subscribe to the issue in question. The name of the bank, it is said, should appear only with, and in the same type as, the names of the brokers, solicitors, auditors, secretary and the registered office. With regard to accounts, the committee state that where a private company is a subsidiary of a public company, or a public company is a subsidiary of a private company, there appears to be little justification for continuing the exemption from the duty of filing accounts with the Registrar. Among the many other recommendations of the committee are: that no director or employee of any company or of any subsidiary, sub-subsidiary, or associated company, or those companies themselves, should be permitted to act as debenture trustee for a company; that the definition of subsidiary company should be extended to cover any company controlled directly or indirectly by the parent company itself or through the medium of any subsidiary or sub-subsidiary company; that subsidiaries might well be prohibited from acquiring shares in any holding or parent company which controls them; and that a declaration of solvency under s. 230, to be valid, should be accompanied by a statement of assets and liabilities with an auditors' certificate attached thereto, and if the company's debts have not been paid within a year from the commencement of the winding-up, that a fresh declaration, statement of assets and auditors' certificate be filed. The General Managers of the Scottish Banks gave evidence on the same day through their representatives, Messrs. N. C. HIRD and G. MACKENZIE.

Nominee Shareholders.

ONE of the most interesting features of the evidence offered before the COHEN Committee by the Committee of London Clearing Bankers on 21st January was the analysis of the position with regard to the holding of shares and debentures by nominees. They stated that the original purpose of the formation of nominee companies by the banks was to provide a more perfect form of cover than that afforded by the mere deposit by obligant customers of stock or share certificates. In the public interest, however, there were two valid grounds of criticism: (*a*) concealment of the identity of shareholders where, on grounds of public policy, full disclosure of the controlling interests is desirable and even necessary; (*b*) enablement of directors (and others) having an interest in and special knowledge of the affairs of a company to traffic in its shares without the restraint which a measure of publicity would exercise. One of the clearing banks provided figures which suggested the possibility that a number of cases of abuse could exist, but there was no evidence that these were widespread. Suggestions had been made for the registration on the company's share register (or a supplemental register) of all beneficial owners as well as legal owners and the inclusion of particulars of the former in the annual return of members and their shareholdings. The committee pointed out that the definition of "beneficial interest" in relation to settlements would present great difficulty. To require disclosure merely down to the names of the trustees of a settlement would afford a wide loophole for evasion; and yet, to provide that the names of all existing or possible future beneficiaries under the settlement should be given, would be impracticable. The committee held that the registration of debentures, debenture stock, or even preference shares (unless they carried full voting rights) without requiring a disclosure of beneficial interests was hardly objectionable. Legal machinery, in order to be effective, would have to apply impartially to trustees, mortgagees, nominee companies, individuals, and private companies, and would have to be retrospective. There would also have to be penalties for non-compliance. It was suggested that it might be made possible for the Board of Trade to obtain evidence of beneficial ownership wherever the public interest so requires, and, if it is proved that abuses are sufficiently widespread, that directors should not be allowed to hold shares or stocks in any companies of which they are directors in the name of nominees or to be interested in them through trusts or to buy or sell them into or out of nominee names without disclosure to the board of directors. The committee's evidence has, obviously, been prepared with the greatest of care and thought and sheds a new light on all the questions within its purview.

Food Prosecutions.

SOLICITORS who have to appear in the police court to defend persons charged with the lesser type of offence against the food regulations will be interested in a somewhat lengthy question and answer in the House of Lords on 21st March. LORD ADDISON asked for information as to a recent prosecution of a person at Lowestoft "for giving a piece of pork to his daughter," and asked whether the Government were prepared so to modify the regulation in question that family or personal gifts of this character should cease to be treated as crimes. The charge, said his lordship, was for supplying rationed food although not a retailer, and the short facts were that the accused gave three pieces of pork weighing 2lb., 4lb. and 3lb. respectively to his daughter, his daughter-in-law, and a friend. His lordship said that the magistrate apparently had very little sympathy with the prosecution for he fined him 1s. on the first charge, 2s. on the second, and another 1s. on the third. It was the first time that it had been an offence in British law for a father to give something to his child. Like many other persons who lived in the country, he saw nothing wrong in producing and curing a pig and sending a small piece to his children, and the Ministry of Food encouraged the production of pigs by the produce of gardens. His lordship said that the right thing to do, when the licence was given to kill the animal, was to cancel the coupons for bacon for a prescribed number of months, and that would be a very effective way of dealing with the matter. His lordship also asked why it was wrong to give away a piece of pork if it was right to give away half a dozen eggs. LORD WOOLTON, in reply, said that in the case referred to proceedings were instituted under the Food Rationing (General Provisions) Order, 1943 (S.R. & O. 1001), which laid down the conditions under which rationed food might legally be supplied and obtained. There was a general instruction that neither consumers nor traders were to be prosecuted for technical or trivial offences. There might sometimes be a difference of opinion as to what was technical or trivial. In the case in question the defendant, having previously been warned that it would be contrary to his licence to dispose of his meat in the manner alleged, had disposed of nearly 90 lb. to persons unknown within three days of being warned. As the events occurred at Christmas time, there was room for a charitable view. In any case, the question of improvement of the regulation was being examined, so that, if possible, pigkeepers may be given some latitude to be more generous to their friends. At the same time it would be recognised that every care must be taken to ensure that those who received a share of scarce feeding-stuffs in order to produce pork and bacon should not be allowed to abuse that advantage, to make profit for themselves by illegal sales or barter.

Recent Decisions.

In *J. Lyons & Co., Ltd.* v. *Attorney-General*, on 29th March (*The Times*, 30th March), UTHWATT, J., held that electric lamps, plugs, socket holders, blocks, roses, and other fittings installed in one of the plaintiff company's teashops, were not plant and machinery within the Plant and Machinery (Valuation for Rating) Order, 1927, and, therefore, not land within s. 103 of the War Damage Act, 1943, as they were not properly to be regarded as part of the setting in which the business was carried on, or as part of the apparatus used for carrying on the business, but were merely required to give light where natural light was insufficient.

In *Bowater* v. *Rowley Regis Corporation*, on 27th March (*The Times*, 28th March), the Court of Appeal (SCOTT, GODDARD and DU PARCQ, L.JJ.) held that where a carter in the employment of the defendant corporation, acting under a foreman's orders, against which he at first protested, took out a horse which was known to have propensities to bolt, and the carter was injured through the horse running away, there was nothing to show that the carter was *volens* so as to make the maxim of *volenti non fit injuria* apply. The court held that "the mere fact that he continues the work, even though he knows of the risk and does not remonstrate, does not preclude his recovering in respect of the breach of duty" (see *per* LORD HERSCHELL in *Smith* v. *Baker* [1891] A.C. 325), and here the fact that he did remonstrate made the appellant's case stronger.

In *Harman* v. *Somersetshire Justices and Others*, on 30th March (*The Times*, 31st March), ATKINSON, J., held that a condition in relation to cinematograph exhibitions on Sunday, imposed by the Somersetshire justices under authority delegated to them by the Somersetshire County Council as the licensing authority for the County of Somerset, was neither invalid nor unreasonable. The condition in question was that no child under sixteen, whether accompanied by an adult or not, should be admitted to the cinema at any Sunday opening. His lordship held that the licensing authority was entitled to take into account not only matters relating to the user of the premises, but also the public interest and welfare.

A Conveyancer's Diary.

Commorientes—II.

In *Re Grosvenor* [1944] Ch. 138, two brothers, aged respectively seventy-two and sixty-five, were living together in Oakley Street, Chelsea. The elder is called "the first testator" and the younger "the second testator." Both brothers were killed by a bomb which dropped on a neighbouring house, No. 5, Upper Cheyne Row, where there was a basement shelter protected by sandbags to which they were in the habit of going during air raids. In the shelter there were also the testators' cook-housekeeper, Mrs. Parke, and a Mrs. and Miss Price Jones, who occupied No. 5, Upper Cheyne Row. The bomb appears to have penetrated right through the house and to have exploded in the shelter. All five persons were, of course, killed, and indeed the report makes it clear that they were blown to pieces. It would be impossible to imagine a plainer case of absolutely simultaneous deaths, if absolute simultaneity is possible *in rerum natura*. Luxmoore, L.J., remarked that the "vagaries of bomb blast are notorious," and pointed out that people have been found alive in debris after buildings have been demolished by direct hits from bombs. But, with great respect, that is not the point; all five persons' bodies were blown to pieces, and I suppose that it could hardly be contended that life can resist such a process even by a fraction of a second.

The real difficulty was whether simultaneous deaths are possible at all. Clearly if A dies in London at a given moment of time it is possible (indeed it is probable) that someone else dies at precisely that moment somewhere in the world. I do not see how that proposition could be denied except by one who adopted a philosophy which conceived that absolute simultaneity is impossible. On the necessarily approximate conceptions with whose aid lawyers and juries must find facts, I am confident that the proposition must find acceptance. But it is stretching the long arm of coincidence rather far to say that of all the places in the wide world where the second commorient might be found, he is to be found less than a yard away. One can thus say with some assurance that, the order or simultaneity of deaths being a matter of fact, simultaneous deaths of persons near together in space (and closely enough connected in other ways to make the order of their deaths have the slightest importance to property lawyers) must necessarily be somewhat rare and difficult of proof, even though one accepts the premise that simultaneous deaths are possible.

The real point in *Re Grosvenor* was whether simultaneous deaths are possible in any circumstances. In the earlier case of *Re Lindop* it had been argued that the husband and wife died simultaneously. The facts there were not quite as strong, since the parties were only in the same house, and there was nothing to show that they were together in a space so confined as a small shelter. But Bennett, J., had been inclined to say that time is infinitely divisible and that therefore they *could* not have died simultaneously. In *Re Grosvenor*, Cohen, J., had followed Bennett, J.; in the Court of Appeal, Luxmoore, L.J., who dissented, also accepted the proposition that time is infinitely divisible, but said that was not of itself decisive. He took the line that s. 184 must apply unless an affirmative answer can be given to one of three questions, viz.: (i) Did A survive B? (ii) Did B survive A? (iii) Did both die at exactly the same moment of time? Obviously no answer could be given to either of the first two questions. In *Underwood* v. *Wing*, Lord Cranworth had remarked on the difficulty of proving simultaneous deaths and the onus had become no lighter. Here Cohen, J., had felt unable to decide on a fact that the deaths were simultaneous and there were no materials on which the Court of Appeal could properly reverse his decision. None of the three questions could therefore be answered. Hence s. 184 applied.

One part of the answer is to be found in the judgment of Lord Greene, M.R. He said that the infinite divisibility of time was a metaphysical conception, "ill-suited for adoption by the law of this country which must proceed on the basis of common sense." It was true that Lord Cranworth had referred to the difficulty of proving simultaneous deaths. But "in the year 1855 the sort of calamity in which two persons might lose their lives, such as fire or shipwreck, was in its nature such as to leave a reasonable probability that one survived the other . . . We have progressed far since those days." "If Lord Cranworth had foreseen the march of civilisation and had been able to visualise the possibility of a high explosive bomb bursting in a basement and blowing a number of persons to pieces, I cannot help thinking that he would have used different language."

Goddard, L.J., if I may respectfully say so, made a most valuable contribution to the study of a subject which has perhaps been too exclusively the property of equity judges and counsel. He pointed out that the jury is the normal tribunal of fact, and that it is "an elementary proposition that in civil cases the preponderance of probability may constitute sufficient ground for a verdict," a dogma whose ancestry is at least Elizabethan. To approach the subject like this brings us at once back into the sphere of realities. If a jury were confronted with the facts of *Re Grosvenor* and were given any direction short of being told that simultaneous deaths are a concept unknown to the law, there could not be the slightest doubt but that they would have found that the deaths were simultaneous. Cases of the administration of estates are, of course, assigned to the Chancery Division, but even there it is possible (in peace time) to apply for a jury under R.S.C., Ord. 36, r. 3. Such an application might easily not succeed, but I suggest that the foregoing considerations show how these cases should be approached. The true line seems to be to imagine the summing-up were such a case tried by jury. The direction would owe something to each member of the Court of Appeal. To the Master of the Rolls it would owe the point that the infinite divisibility of time is metaphysics not law; to Luxmoore, L.J., the emphasis on the extreme difficulty of proving simultaneity of events as a matter of fact; to Goddard, L.J., that a jury is the tribunal provided by our law for solving questions of fact however difficult, which it may do on the preponderance of probability. Finally, Luxmoore, L.J.'s three questions would be put to them. After all, juries constantly do have to deal with questions quite as difficult: at one end of the scale there was the Bodmin jury who had to decide about the application of the rule in *Shelley's* case in *Van Grutten* v. *Foxwell* [1897] A.C. 658 (see p. 660); at the other there are juries dealing with running down cases who have to address themselves to split seconds in applying the "last opportunity" rule.

Of course, in practice these cases will not be tried by juries, but I suggest that the court should be invited to look at them from the point of view set out above. It will follow that in some cases, as in *Re Grosvenor*, there will be findings that deaths were simultaneous. But such cases will be rare even in war time, as *Re Grosvenor's* facts were unusually clear. I imagine that a jury would have found for simultaneous deaths in *Re Lindop*, but I should not feel confident of such a verdict unless (i) the premises were demolished by a direct hit, and (ii) there was evidence that the parties were in the same room and preferably (iii) that the bomb burst in that room.

As the deaths in *Re Grosvenor* were simultaneous, s. 184 did not apply. It may perhaps be worth while to notice the consequences. The first testator left £200 to the second testator and also a share of residue. He left a legacy of £10 to Mrs. Parke. The balance of residue went to his surviving brothers. The effect of the decision will have been to give the whole residue, undiminished by the £200 and the £10, to the brothers other than the second testator, which obviously was what the testator would have wished. If s. 184 had applied Mrs. Parke's executor would have got £10, and the second testator's estate would have been swelled by £200 and a share of residue. The second testator left £400 to Mrs. Price Jones, a number of specific devises and bequests to the first testator, and residue as to one-third to the first testator, one-third to one Rowena Hickman and one-third to a charity. Under the decision, as also under s. 184, the specific gifts to the first testator failed. Under the decision, but not under s. 184, the legacy to Mrs. Price Jones (who was some years younger) failed. There are, of course, not enough facts to say how the second testator would have viewed this development. Under s. 184, but not under the decision, the residue would have been swelled by sums coming from the first testator. One-third lapsed in any event, as being given to the first testator, and presumably went to the other brothers as next of kin. The gift of the other two-thirds were good in any event and much the most important issue in the case was whether or not the charity and Rowena Hickman were to get amounts increased by the first testator's bounty to the second testator.

The first moral of all this is that it is not visible how s. 184, if it had applied, would have "removed" any difficulties; the consequences of a finding of simultaneous deaths were identical with those which would have followed from an application of *Wing* v. *Angrave* in the days before 1926. So far as one has materials to judge, s. 184 would have had less satisfactory results.

The other moral is that it is still not too late for testators who are still alive to alter their wills providing for the vesting of their bounty only if the beneficiary survives by one month. In doing so it would be as well to avoid a formula, which I recently saw in practice, whereby a husband and wife each gave to the other his or her residue if the other should survive by one month, and continued: "if he (she) shall die within one month of me *by enemy action*," then over. The parties died natural deaths at dates three weeks apart. Each estate therefore passed on intestacy. I do not know where the formula was found, but I am glad to say that the wills were made six weeks before my first article on commorientes, so that this misfortune was not due to misunderstanding of anything that I had said here.

Honours and Appointments.

The Lord Chancellor has appointed Mr. Herbert Atkinson to be the Registrar of Harrogate, Ripon and Tadcaster County Courts and District Registrar in the District Registry of the High Court of Justice in Harrogate, and Mr. Allen Vaughan Nutt to be the Registrar of Derby and Long Eaton, Ashbourne, Bakewell, Burton-on-Trent, Buxton and New Mills and Matlock and Wirksworth County Courts and District Registrar in the District Registry of the High Court of Justice in Derby as from the 1st April last.

Mr. Joshua Davies, K.C., has been appointed Stipendiary Magistrate of Merthyr Tydfil. Mr. Davies was called by the Inner Temple in 1919, and took silk in 1939. Since 1942 he has been Recorder of Swansea.

Landlord and Tenant Notebook.

"For the Duration."

Lace v. *Chantler* (1944), 1 All E.R. 305 (CA,) must be considered a disturbing decision, at all events for those who have advised on the effect of tenancies inartistically expressed to be "for the duration." No practitioner would, of course, ever draft a habendum in those terms; but clients who had concluded such agreements without advice could be told that *Great Northern Railway Co.* v. *Arnold* (1916), 33 T.L.R. 114, had removed all cause for anxiety, or hope of causing anxiety, as the case might be.

The claim in *Lace* v. *Chantler* was for possession, and though the county court judge found for the plaintiff on the ground of breach of condition and did so in the absence of a forfeiture clause, it appeared that the plaintiff had given the defendant a notice to quit which enabled the Court of Appeal to uphold the order. The property had been sublet, furnished, at a weekly rental; the agreement was "partly oral and partly in writing," a rent book contributing the latter element; and in that book had been written the words "furnished for duration."

Lord Greene, M.R., delivered the main judgment in the Court of Appeal; MacKinnon, L.J., agreed shortly; Luxmoore, L.J., was content to express concurrence.

The following passage from the judgment of the learned Master of the Rolls indicates the principle applied: "A term created by a leasehold tenancy agreement must be a term which is either expressed with certainty and specifically, or is expressed by reference to something which can, at the time when the lease takes effect, be looked to as a certain ascertainment of what the term is meant to be." And, citing a passage from "Foa," to the effect that if the term be fixed by reference to a collateral matter, such matter must itself be certain (e.g., "as many years as A has in the manor of B"), or be capable of being rendered certain *before the lease takes effect* (e.g., "for as many years as C shall name"), the learned Master of the Rolls held that for this reason the grant was void for uncertainty.

This does indeed accord with such ancient authorities as Bacon's Abridgment, Sheppard's Touchstone, and the decision in *Say* v. *Smith* (1563), 1 Plow. 269. Bacon's Abridgment 4, p. 836, tells us: "If one makes a lease to J.S. for twenty years, if the coverture between A and B shall so long continue, this is a good lease for that time *prima facie*, though the dissolution of the coverture may determine it sooner. And there also it seems that a lease to one generally during the coverture of A and B is a good lease; but this surely can be no other than a lease at will, for the uncertainty how long the coverture will continue takes off from the certainty of the number of years that can be affixed to such lease."

A war between two countries and a marriage of two individuals have this in common; no one can say when either *will be* over.

The relevant passage in Sheppard's Touchstone will be found in Book 2, at p. 274. In *Say* v. *Smith* (actually a replevin action for distress damage feasant) examples were cited of a term measured by reference to a sentence of imprisonment for hunting, good because there was a statutory sentence of two years, and satisfaction of a right of execution of a statute merchant, which might be six, twelve or twenty years, and was therefore bad. But perhaps its chief importance lies in the insistence on certainty in advance: "every contract sufficient to make a lease for years ought to have certainty in three limitations, viz., in the commencement of the term, in the continuance of it, and in the end of it; so that all these ought to be known *at the commencement of the lease*, and words in a lease, which don't make this appear, are but babble . . ."

Now these authorities were cited to Rowlatt, J., in *G.N.R.* v. *Arnold*, *supra*, which was an action for possession of a house of which the plaintiffs were leaseholders, and which they had purported to sublet to the defendant without obtaining consent required by the head lease. It appeared that in course of the negotiations the plaintiffs had written the defendant a letter including the following passage: "We are afraid our letter was misleading; we do not intend you to be subject to a week's notice from any time, which would not be reasonable. We will let it to you for the period of the war, the rent payable weekly." The resulting agreement was worded "for the period of the war at a weekly rent of £3 5s., payable weekly."

The line taken by the learned judge was that while the authorities referred to supported the plaintiffs, the law to-day ought not to be helpless when the question was one of enforcing or tearing up a deliberately expressed agreement. For both parties had intended that the defendant should have the premises for the period of the war. The grant of a 999-year lease, terminable with the conclusion of the war (one certainly could not have reproached Rowlatt, J., with complacency), would have been perfectly good; by hook or by crook the defendant should have what he had bargained for. Judgment was given for him accordingly, but a claim for rectification of the agreement (by expressing the stipulation contained in the letter cited) was refused.

It certainly may seem that Rowlatt, J., after agreeing that the ancient authorities supported the plaintiffs, brushed them aside somewhat unceremoniously. In *Lace* v. *Chantler*, the Court of Appeal has now, while not expressly overruling *G.N.R.* v. *Arnold*, so distinguished or explained it that it is unlikely to be of any use to anyone. According to the judgment of Lord Greene, the fact that the plaintiffs in the older case had undertaken not to give notice to quit during the war was all-important to the validity of the decision. MacKinnon, L.J., refrained from commenting on *G.N.R.* v. *Arnold*, as an authority, but went on to observe that Rowlatt, J.'s conclusion was avowedly arrived at by "hook or by crook" rather than upon legal principles.

It might be urged that the principle by which effect is to be given to intentions clearly expressed is a legal principle, and that the real criticism should be that effect was given to what was too vague to amount to a contract. And I venture the suggestion that if Rowlatt, J., instead of condemning the authorities on account of their age, had sought to place the facts before him outside their scope, he might have proceeded on these lines; the passage from Bacon, and the judgment in *Say* v. *Smith* concerned leases for years; the latter expressly says so, and there is no reason why the words "for years" should be rejected as mere surplusage. Leases the duration of which are determined by lives—the life of the tenant or those of other persons—have been recognised as valid for centuries (see 2 Black. 121). It is true that the second-mentioned have been regarded as freehold, and this may account for the expression "a leasehold tenancy agreement" which occurs in the passage from the judgment of the Master of the Rolls in *Lace* v. *Chantler* cited above; but a lease for the life of the tenant has not been so regarded, and does not fulfil the requirement of predetermined certainty of term. A modern illustration of the validity of such a grant is afforded by *Zimbler* v. *Abrahams* [1903] 1 K.B. 577 (C.A.) (premises let at weekly rent, landlord undertaking not to give notice to quit as long as rent paid "regular": held, in effect an agreement to grant lease for life of tenant) which was cited in *Lace* v. *Chantler* but treated with as little respect as was *G.N.R.* v. *Arnold*.

Admittedly, even when the distinction between leases for terms of years and other leases has been drawn, it may be difficult to place a lease "for the duration of the war" in the same class as a lease for life. For it might be argued that a life must end; but must a war?

To-day and Yesterday.

LEGAL CALENDAR.

April 3.—On the 3rd April, 1732, Thomas Doe was hanged at Chelmsford "for breaking the gaol in order to escape transportation to which he was condemned on the 10th March, 1730. His method of thieving was in conjunction with a numerous gang to steal all sorts of cattle from farmers, and to sell them in Smithfield Market, and the grand jury found no less than thirty-nine indictments against him, of all of which, after conviction, he confessed himself guilty and acknowledged the justice of his sentence."

April 4.—William Corbett was a sailor from New Hampshire. He had a bad character for irregularity and extravagance, and when he came to England he fell into the worst of company. He took lodgings in a Rotherhithe public-house kept by a man named Knight. Before long he cut the throats of the landlord and his wife, making off with their money and linen. He was tried at the Surrey Assizes, convicted and hanged on Kennington Common on the 4th April, 1764. At the gallows he acknowledged his guilt and spent a quarter of an hour in prayer. His body was afterwards hung in chains on the road from Rotherhithe to Deptford.

April 5.—Mr. Arundel Cooke, a member of the bar, had financial expectations on the death of his brother-in-law, Mr. Crisp, a gentleman of large property in Suffolk and a neighbour of his. After a period of ill-health, Mr. Crisp showed signs of recovering, to the intense disappointment of Mr. Cooke, who eventually hired a labourer named Woodburne to murder him. His plan was to invite his brother-in-law to dine on Christmas Day, the guest being waylaid in the churchyard on his way home. The scheme was duly executed. Woodburne hid behind a tombstone, his employer gave the signal of a loud whistle, and the victim was set upon and grievously wounded. He did not, however, die, but, covered with blood, he regained the door of his would-be murderer. Though he suspected what had happened, he held his tongue till it was safe to speak. Accordingly, at the next assizes at Bury St. Edmunds, Mr. Cooke and Woodburne were indicted under an Act of Charles II which made it a capital offence to lie in wait for a person to maim or disfigure him. Before sentence was passed Mr. Cooke submitted a learned argument that as his intention was murder and not maiming, his offence did not come within the statute. Lord Chief Justice King refused, however, to be convinced. Accordingly, on the 5th April, 1722, the two culprits were hanged, Mr. Cooke at four o'clock in the morning, since he was anxious to avoid being exposed to the country people, and Woodburne in the afternoon.

April 6.—On the 6th April, 1752, Mary Blandy was hanged at Oxford for the murder of her father, who was town clerk of Henley-on-Thames. He had opposed her infatuation with Captain William Cranstoun, a Scots officer twenty years her senior, and a married man. From Scotland, after he returned there, her lover had sent her powders which she had put into her father's food. These produced violent pains in his bowels and in a short time he died. She alleged that she had administered them to procure his affection for Cranstoun, and that she was unaware of their deadly nature, but she was found guilty and condemned to death. She went to her death dressed in black bombazine, and on ascending the scaffold begged that she might not be hanged high "for the sake of decency." When the rope was put round her neck she pulled her handkerchief over her face and gave the signal that she was ready by holding out a book of devotions which she had been reading.

April 7.—On the 7th April, 1750, John Stone was hanged at Maidstone for setting fire to the barns and ricks of a Mr. Clarke at Throwleigh, and John Collington was executed at the same time for having hired him to do it. "Collington's behaviour from his condemnation was remarkably morose and malicious, and, though he was much pressed by the attendant clergyman to forgive his enemies and die in charity with all men as necessary to his salvation, he obstinately refused it."

April 8.—On the 8th April, 1756. "John Symonds, otherwise Spanish Jack, was executed at Maidstone in Kent for stealing a silver tankard from a public-house in Rochester. As he was an old offender and knew most of the thief-takers about London, he was particularly asked at the place of execution concerning them; when he declared that at the instigation of Macdonald and others he did in September, 1751, entice William Holmes, John Newton and Francis Mandeville to commit a robbery in Whitechapel, who in a few days afterwards were apprehended by the gang of thief-takers and were all three capitally convicted at the ensuing sessions in October, and afterwards executed at Tyburn; and though they had £420 reward, he received only £10." He was born at Alicante, in Spain, and his real name was Gonzalez.

April 9.—On the 9th April, 1740, Charles Drew was hanged at Bury St. Edmunds for the murder of his father, Charles John Drew, of Long Melford. He gave the High Sheriff a confession that he had agreed to settle £100 a year on Edward Humphreys if he would commit the murder, that Humphreys accepted and they went to his father's house at eleven one night, that when they came near the accomplice's heart failed him, so he himself took the gun, knocked at the door and, when his father opened it, shot him dead. At the trial Humphreys was the chief evidence. Other circumstances telling against him were that he had given Humphreys money to keep out of the way; that when Humphreys was arrested he showed great uneasiness and tried to bribe someone to obtain his discharge; that he went to London, changed his name, left off mourning clothes, tried to hide himself and gave orders to convey away his estate; that he sent a man to Bury Gaol to find out what Humphreys would say; that when he was arrested he tried to bribe one of the Newgate turnkeys to let him escape. "His Majesty, in compassion to the mother and four sisters of the convict, was graciously pleased to remit his right to the forfeited estate computed at £50,000 or £60,000."

VISITOR'S INTEREST.

Viscount Maugham's visit to Croydon County Court, when he sat next to Judge Sir Gerald Hurst listening to the cases —most of them concerning defaulting tenants—recalls a story of the first Lord Russell of Killowen when he was a leader of the Bar. It was told by a friend who had lately taken up a judicial position in a large provincial town which was also an assize town. "On one occasion Russell came down special to conduct an important case at the assizes. He brought it to an end early one morning . . . and presently I saw him shouldering his way through a large crowd into my court. Everyone made way for him, though no one knew him, and he walked straight on to the Bench, sat down on a chair near me, took out his snuff-box and the well-known bandana (without a word or sign to me) and was instantly absorbed in the cases. Among the applicants were the wives of debtors applying for the suspension of the orders of payment or commitment made against their husbands. Wife after wife entered the box with shawls over their heads and babies in their arms and detailed with more or less truth the destitution in which they were. In a very few minutes Russell was greatly moved and would exclaim: 'Poor creature! Poor creature!' and then when one . . . perhaps evaded the little questions which it was my duty to ask, he would break in with: 'Now listen, ma'am, to what the judge says and pray give an answer immediately.' People seemed a good deal surprised and I fancy would presumably have been more surprised if he had remained a little longer, for I have no doubt that in ten minutes he would have been trying all the applications and cases and gathered into his grip all the business of the court, but fortunately his time was up, and he strode off to catch his train."

Our County Court Letter.

Palmist's Liability for Rent.

IN *Browning* v. *Main*, at Weston-super-Mare County Court, the claim was for £18 as nine weeks' rent of premises adjoining a café, at £2 per week. The plaintiff's case was that the terms of the agreement were written on the back of a receipt. This was kept by the defendant, but was not produced in court. The defendant denied that there was any written memorandum of the agreement. The premises were not taken for nine weeks, as that was the duration of the season. The police might have stopped him at any time from using the premises for palmistry, which was illegal. His Honour Judge Wethered held that the defendant's claim to practise palmistry was mere showmanship. He was liable for nine weeks' rent, although he had departed suddenly before the end of that period. Judgment was given for the plaintiff, with costs. It is to be noted that illegality in the contract of tenancy is a good defence to an action for the rent. See *Cowan* v. *Milbourn* (1867), L.R. 2 Ex. 230, in which the premises were let for blasphemous lectures. Palmistry is not *per se* illegal, however, as it may be mere character-reading. Pretending to tell fortunes by palmistry is an offence under the Vagrancy Act, 1824, s. 4.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Group Libelling.

Sir,—Your remarks on "Group Libelling" on p. 96 of your issue of 18th March are very welcome.

As you state, group libels in England come under the head of sedition. The fact is that our Criminal Law is fully adequate to deal with any manifestations of racial, national or religious hatred.

This is unfortunately not generally realised. What a world of significance there is in your remark: "all that remains is that the law shoud be rigidly enforced"!

Anti-Semitism and colour prejudice, for example, could rapidly be stamped out if the law were indeed "rigidly enforced."

In my view only public opinion—enlightened as to the present possibilities of our law—can ensure that this is done.

London, N.W.3. RALPH MILLNER.
23rd March.

Obituary.

MR. A. D. COWBURN.

Mr. Arthur Douglas Cowburn, M.R.C.S., L.R.C.P., D.S.H., formerly coroner for the south-western district of London and a past president of the Coroners' Association of England and Wales, died on Monday, 27th March, aged seventy-five. He was called to the Bar by the Middle Temple in 1903, and learned his surgery at St. Thomas's Hospital. He had been deputy-coroner for West London, and also for North-East London, and retired in 1939.

MR. A. B. DUNNE.

Mr. Arthur Briggs Dunne, barrister-at-law, died on Monday, 27th March. He was called by Lincoln's Inn in 1913.

MR. J. E. CHADWICK.

Mr. James Edward Chadwick, solicitor, of Messrs. Marsden and Marsden, solicitors, Blackburn, died on Tuesday, 14th March, aged seventy. He was admitted in 1908.

MR. H. A. MERRIMAN.

Mr. Hugh Alexander Merriman, solicitor, of Messrs. Smallpiece and Merriman, solicitors, of Guildford, Surrey, died on Friday, 17th March, aged seventy. He was admitted in 1898, and was clerk to the Guildford County and Borough magistrates.

MR. L. W. PASSMORE.

Mr. Leonard Wolfe Passmore, solicitor, of Messrs. Templer and Passmore, solicitors, of Tunbridge Wells, died on Sunday, 19th March, aged fifty-four. He was admitted in 1914.

MR. L. H. PEARSON.

Mr. Lewis Henry Pearson, solicitor, of Bradford, died recently, aged seventy-eight. He was admitted in 1889.

MR. A. S. F. PRUEN.

Mr. Arthur Sidney Fitzgerald Pruen, solicitor, of Messrs. Haddock & Pruen, solicitors, died on Friday, 24th March, aged sixty-one. He was admitted in 1906, and had been Mayor of Cheltenham since last November.

At Oxford recently, a decree was approved agreeing to the creation of a Polish Faculty of Law there, subject to a number of conditions in which the Polish Government have concurred. The faculty is to elect its own dean, who will have the power of a rector of a Polish university, including that of conferring degrees.

Notes of Cases.

HOUSE OF LORDS.

Sun Life Assurance Co. of Canada *v.* Jervis.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Porter. 8th March, 1944.

Practice—Leave to appeal—Leave conditional on respondent retaining benefit of decision of the Court of Appeal—No lis—Appeal not maintainable—Administration of Justice (Appeals) Act, 1934 (24 & 25 *Geo.* 5, *c.* 40), *s.* 1.

Appeal from the decision of the Court of Appeal (Scott and Goddard, L.JJ., Luxmoore, L.J., dissenting).

This action was brought by the respondent for rectification of an endowment policy which he had taken out with the appellants, an assurance company, to make the benefits he took under the policy accord with the benefits described in a document furnished to him before the issue of the policy. The Court of Appeal having made an order for rectification, gave the appellants leave to appeal to the House of Lords upon their undertaking to pay the costs, as between solicitor and client, of the respondent in any event and not to ask for the return of any money ordered to be paid to the respondent by the Court of Appeal.

VISCOUNT SIMON, L.C., said that the terms put on the appellants by the Court of Appeal were such as to make it a matter of complete indifference to the respondent whether he won or lost, as he had already got everything he could possibly get and, however the appeal turned out, he could not be deprived of it. It was not a proper exercise of the authority which the House possessed, if it occupied time in deciding an academic question. If the House undertook to do so, it would not be deciding an existing *lis* between the parties who were before it, but would merely be expressing its views on a legal conundrum. What was sometimes called a "friendly action" was not necessarily open to this objection, for the parties in such an action were arguing for different results and the winner gained something which he would not gain if he lost. If the appellants desired to have the views of the House of Lords on the issue upon which the Court of Appeal had pronounced, its proper course was to await a further claim and to bring that claim, if necessary, up to the House of Lords with a party on the record whose interest it was to resist the appeal. Research had not discovered any previous decisions in which the House had undertaken to review the decision below when the respondent had been finally settled with. The Administration of Justice (Appeals) Act, 1934, s. 1, did not in terms assert that whatever conditions were imposed by the Court of Appeal when giving leave, the House of Lords must hear the case. There was nothing contrary to that statute in holding that the House should not hear argument on this appeal, having regard to the conditions imposed by the Court of Appeal, which had deprived the matter of the quality of a live issue. It was not necessary to lay down a rule for all cases. It was enough to say that, if the appellants had not applied for leave to withdraw the appeal, it would have been dismissed.

The other noble and learned lords agreed.

COUNSEL: *Pritt*, K.C., *Slade*, K.C., and *Anthony Gordon*; *C. Henderson*, K.C., and *Winning*.

SOLICITORS: *Freshfields, Leese & Munns*: *Maude & Tunnicliffe* for *James Young*, Grimsby.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re Scarisbrick Settled Estates.

Cohen, J. 28th February, 1944.

Settled land—Income of tenant for life insufficient to live in mansion house—Sale of mansion impossible during the war—Application to enable capital moneys to be used for maintenance—Jurisdiction—Settled Land Act, 1925 (15 *Geo.* 5, *c.* 18), *s.* 64—*Settled Land and Trustee Acts (Court's General Powers) Act*, 1943 (6 & 7 *Geo.* 6, *c.* 25), *s.* 1.

Adjourned summons.

The S settled estates were, at the date of this application, held under a resettlement, dated the 21st December, 1917, and a private Act of Parliament upon discretionary trusts for the benefit of the applicant for his life with remainder in strict settlement to this issue, and in default of issue to uses in favour of the other children of his father, of whom there were none, and subject thereto to the use of the applicant in fee simple. The settled estates include S Hall, the family residence, a very large residence containing valuable wood work and fittings. Part of it was let to the Red Cross and part was occupied by the applicant and his wife. Prior to the war the income of the settled estates had been insufficient to enable the applicant to maintain S Hall out of income and capital had been raised, under a power which no longer existed, and applied in aid of income. By this summons the applicant asked that £10,000 might be raised out of capital moneys to enable him to maintain and carry on S Hall as his family residence and to execute certain necessary repairs. It appeared from the evidence that the applicant's income was insufficient to enable him to live in S Hall and, if he was not assisted out of capital, he would have to leave. During the war it was unlikely that any sale of the property could be effected, and, owing to its ornate character, if it were left empty heavy expenditure would be necessary to prevent it deteriorating in value. The application was made under the Settled Land Act, 1925, which provides: "(1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land . . . which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner." Subsection (2) defines "transaction as including any application of capital money." The Settled Land and Trustee Acts (Court's General Powers) Act, 1943, by its preamble, states that it is an Act to extend temporarily the powers conferred on the court by s. 64, and it authorises any expense of action taken in the management of settled land to be treated as a capital outgoing, if the court is satisfied that the action proposed is for the benefit of the persons entitled under the settlement and the available income of the person beneficially entitled in possession to the rents of the land, who might have been expected to bear the expense, had been reduced by circumstances arising out of the war.

COHEN, J., said that the evidence established a deficiency in available income and that the other conditions mentioned were satisfied. But it was pointed out for the trustee that the Act of 1943 only authorised the application of capital moneys in "management" and that some of the items of expenditure did not fall within the term "management" as defined in that Act. This being so, such application of capital moneys, if ever authorised by the Act of 1925, must be regarded as excluded by the Act of 1943. In his view, there was little doubt as to the jurisdiction under the Act of 1925 before 1943 in view of the decision in *In re White-Popham* [1936] Ch. 725. It would be strange if an Act entitled as one to extend, not to modify, powers in fact restricted them. He could see nothing in the language of the Act which would justify him in imposing such a restriction. If he were satisfied that the conditions were fulfilled, he had jurisdiction to make the order. In his view, the second condition was satisfied, the transaction was for the benefit of the persons entitled under the settlement. As regards the first condition, it was arguable that some of the expenditure did not directly concern the settled land. Assuming that were so, he was satisfied that he had jurisdiction, for if the applicant had to repay advances already made to him, the deficiency in this income would be such that he could not continue to reside at S Hall. His continued residence was essential for the preservation of S Hall. Accordingly, all the conditions requisite for the making of an order were satisfied. He would decide in chambers the amount he would authorise.

COUNSEL: *Harman*, K.C., and *McMullan*: *Pennycuick*.

SOLICITORS: *Pritchard, Englefield & Co.*, for *Buck, Cockshott and Cockshott*, of Southport.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Safford *v.* Safford.

The President. 13th March, 1944.

Husband and wife—Divorce—Incurable insanity—Detention in pursuance of reception order under Lunacy and Mental Treatment Acts, 1890 *to* 1930—*Absences on trial for fifteen and forty-four days—Whether continuously under care and treatment—Lunacy Act*, 1890 (53 *Vict. c.* 5, *s.* 55 (1))—*Matrimonial Causes Act*, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, c. 57), *ss.* 2 *and* 3.

Wife's petition for divorce on the ground that the respondent was incurably of unsound mind and had been continuously under care and treatment for five years immediately preceding the petition.

In a discretion statement filed under r. 28 of the Matrimonial Causes Rules, she admitted adultery and asked for relief, and the President held that it was a proper case for relief. Two reception orders under the Lunacy and Mental Treatment Acts, 1890 to 1930, were made for the reception and detention of the respondent as a rate-aided patient in the East Riding of Yorkshire Mental Hospital. The first was made on 15th August, 1937, but the respondent was discharged "recovered" on 2nd October, 1937. The second was made on 7th December, 1937, and was still in force at the date of the presentation of the petition on 25th January, 1943. The evidence clearly established that the respondent was incurably of unsound mind, and that that condition had supervened at the date of the second reception order. Two orders were made in 1942 for periods of absence on trial under s. 55 (1) of the Lunacy Act, 1890, for fifteen days and forty-four days respectively. Both were for stated periods but were expressed to be revocable by the medical officer at his discretion within those periods. In the second period the respondent's father brought him back eleven days before the period was due to expire. The respondent was under the control of his father during each period and the father had promised to report from time to time on his condition. The question was whether the statutory definition of "continuously under care and treatment" for the relevant five years was satisfied.

THE PRESIDENT referred to *Shipman* v. *Shipman* [1939] P. 147, in which he had occasion to consider the meaning of "continuous care and treatment" in relation to s. 55 of the Lunacy Act, 1890, the same class of patient and the same local authority, and *Green* v. *Green* [1939] P. 309, where his lordship considered the effect of special arrangements made by the London County Council under the same section. He agreed that absence on trial under s. 55 might be so arranged that detention continued. Absence meant absence from the mental institution, and s. 3 of the Matrimonial Causes Act, 1937, did not provide expressly that the detention must be in the mental institution (*Green* v. *Green*, *supra*). In that case the respondent was confined to an annexe of the hospital and to the care of agents of the local authority, though the "absence" was arranged under s. 55. The view that absence on trial was not normally the equivalent of detention was supported by other sections of the Lunacy Act, 1890 (see ss. 38 (7), 43 (1), 47, 51, 57, 79, 80, 82, 315 and 324). That in common parlance the respondent was continuously under care and treatment in pursuance of a reception order during the two periods of absence on trial his lordship had no doubt. But for the purposes of the Matrimonial Causes Act, 1937, that was not enough. Parliament might see fit to amend the Act, but his lordship could not legislate. He was bound to adhere to his former decision, that, disregarding, on the *de minimis* principle, day-time absences and short absences overnight in accordance with the regulations, there must be continuous detention in the mental institution itself, or as in *Green* v. *Green*, *supra*, in what could be fairly regarded as the equivalent of the mental institution. Absence on trial for substantial periods did not satisfy those requirements. The petition must be dismissed. Leave was granted to appeal.

COUNSEL: *D. Tolstoy*; *E. Holroyd Pearce*, and *J. G. P. Comyn*.
SOLICITORS: *Redpath, Marshall & Holdsworth*; *The Official Solicitor*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Will—Incorporation of Documents—Plan to Aid a Devise.

Q. A client of ours is the owner of a block of land, part of which he acquired under his father's will and the remainder by purchase under two conveyances. Houses have been erected on part and the remainder is vacant. Our client has instructed us to prepare his will, by which he proposes to devise part of the land to each of his three children. He has handed us a plan which shows by distinctive colouring the part which he proposes to devise to each child, but owing to the way in which he wishes to split the land up, it will be a matter of extreme difficulty to frame a satisfactory verbal description of the part included in each devise. Is there any reason why the will should not describe the land devised to each child by reference to the plan? We have never prepared a will referring to a plan, nor do we recollect ever having seen one, but we do not see why a plan should not be incorporated in the same way as, for example, a list of chattels can be incorporated.

A. We see no reason why a plan should not be incorporated. The Probate Rules (12 P.R. and 15 D.R.) contemplate the incorporation of "any deed paper memorandum or other document." The writer does not remember ever to have seen such an incorporation. It is suggested that as full a description as possible be given as well as the plan. Alternatively, it would be feasible to rely solely upon a verbal description, a referee being nominated to settle any dispute.

Easement—Who May Hold.

Q. I am concerned in the grant of an easement of light to a factory, the owners of which have only a leasehold interest. It seems to me that an easement can or should only be granted to the tenant in fee simple of the land upon which the factory stands as the owner of the dominant tenement and cannot be granted to a leasehold—to hold otherwise would be inconsistent with the nature of an easement. Would you. therefore, kindly say—

(*a*) Whether my contention is correct.

(*b*) If not, and in the alternative, could the freeholders and leaseholders take the easement jointly.

(*c*) Whether the easement could be granted to a leaseholder alone.

A. (*a*) A legal easement can only be held "for an estate equivalent to an estate in fee simple absolute in possession *or a term of years absolute*" (L.P.A., 1925, s. 1 (2) (*a*), and it must "enure for the benefit of the land to which it is intended to be annexed" (*ib.*, s. 187 (1)). There is thus no reason why a legal easement should not be granted for a term of years and annexed to a leasehold. The right could be granted in common with others if desired (L.P.A., 1925, s. 187 (2)).

(*b*) We do not see how the right could be granted to the freeholder and leaseholder as joint tenants. Joint tenants must have unity of interest. The right could be granted to the leaseholder and also to the freeholder (in immediate reversion on the term) as he would have a freehold absolute in possession notwithstanding the term.

(*c*) Yes, see above.

Dangerous Tree.

Q. A large tree is standing in a garden near dwelling-houses. The roots of the tree have grown under the adjoining public footpath and roadway. No damage has been caused to the roadway or footpath. The tree is leaning towards the houses and, according to experts, is in a dangerous state. In a gale it might fall upon the houses. If the tree fell, the roots would cause some damage to the footpath or road, but this would be minor damage only, and is not the point which is causing concern. What steps can the local authority take to have the dangerous tree removed or lopped, and if they can take any steps, under what authority is action taken?

A. This does not appear to be a case for the local authority, The owners of the houses should apply for an injunction against the owner of the tree.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 278. COAL DISTRIBUTION Order, 1943. Special Direction (Wales Region) (Restriction of Supplies) No. 1, March 10.
E.P. 312. Coal Distribution Order, 1943, Special Direction (Wales Region) (Restriction of Supplies) No. 2, March 20.
E.P. 280. COAL MINES. The Coal Mining Undertakings Control Order, 1942. General Direction (Employment in Coal Mines) No. 1, March 14.
E.P. 299. CONTROL OF PAPER (No. 63) Order, March 18.
E.P. 326–7 (as one publication). DEFENCE. Orders in Council, March 24, amending the Defence (Agriculture and Fisheries) Regulations, 1939.
326. Substituting a new regulation for reg. 25 of the Defence (Agriculture and Fisheries) Regulations, 1939.
327. Amending reg. 30 of the Defence (Agriculture and Fisheries) Regulations, 1939.
E.P. 321–5 (as one publication). Defence. Orders in Council, March 24, amending the Defence (General) Regulations, 1939.
321. Adding reg. 47AAC to, and amending reg. 47AC of, the Defence (General) Regulations, 1939.
322. Adding reg. 47ADA to the Defence (General) Regulations, 1939.
323. Amending reg. 55F of the Defence (General) Regulations, 1939.
324. Adding reg. 60Q to the Defence (General) Regulations, 1939.
325. Amending reg. 76B of the Defence (General) Regulations, 1939.
No. 285. NATIONAL FIRE SERVICE (Alteration of Fire Areas) (No. 2) Regulations, March 14.
No. 341. National Fire Service (Alteration of Fire Areas) (No. 3) Regulation, March 22.
No. 283. POISONS (Amendment) Rules, Feb. 21.
E.P. 301. PROTECTED AREA Order (No. 5), March 20.
E.P. 302. Protected Area Order (No. 6), March 20.
E.P. 303. Protected Area Order (No. 7), March 20.
E.P. 304. Protected Area Order (No. 8), March 20. Parts of the Counties of Norfolk, Suffolk and Essex.
E.P. 305. Protected Area Order (No. 9), March 20. Parts of the Counties of Kent and Sussex.
E.P. 306. Protected Area Order (No. 10), March 20. Parts of the Counties of Southampton and Dorset.
E.P. 307. Protected Area Order (No. 11), March 20. Administrative County of the Isle of Wight.
E.P. 308. Protected Area Order (No. 12), March 20. Parts of the Counties of Devon and Cornwall.
No. 319. TOWN AND COUNTRY PLANNING. Additional Regulations, March 9.
No. 272. Town and Country Planning Regulations (Scotland), March 9.
No. 253. TRADING WITH THE ENEMY (Specified Persons) (Amendment) (No. 3) Order, March 14.

BOARD OF TRADE.

COMPANIES ACT, 1929. Company Law Amendment Committee (Chairman Cohen, J.). Minutes of Evidence. 10th Day, Jan. 21, 1944. 11th Day Jan. 28, 1944.

Notes.

Chancellor Humphrey H. King has been elected chairman of the legal board of the Church Assembly. The acting secretary during the absence on war service of Chancellor W. S. Wigglesworth is Mr. W. G. Hannah, to whom communications to the board may be addressed at 15, Old Square, Lincoln's Inn, W.C.2.

Macnaghten, J., recently held that where the Income Tax Commissioners have been requested to state a case for the opinion of the High Court, and one of the Commissioners dies before he has signed the case, the case is none the less competently stated.